

# United DoD Workers Coalition

Nat'l Assn. of Aeronautical  
Examiners

Nat'l Air Traffic Controllers Assn.  
Professional Airways Systems  
Specialists

Antilles Consolidated Education  
Assn.

Int'l Brotherhood of Boilermakers  
Assn. of Civilian Technicians  
Communications Workers of  
America

Federal Education Assn./NEA

Int'l Brotherhood of Electrical  
Workers

Nat'l Federation of Federal  
Employees

Fairchild Federal Employees Union  
American Federation of Gov.  
Employees

Nat'l Assn. of Gov. Employees

Int'l Guard Union of America  
Int'l Assn. of Fire Fighters  
Hawaii Council of Defense  
Commissary Unions  
Laborers' Int'l Union of  
North America

Int'l Assn. of Machinists and  
Aerospace Workers

Nat'l Marine Engineers Beneficial  
Assn.

Int'l Organization of Masters,  
Mates & Pilots

Metal Trades Dept., AFL-CIO  
American Nurses Assn.  
United American Nurses

Int'l Union of Operating Engineers

Int'l Union of Painters and Allied  
Trades

United Assn. of Journeymen and  
Apprentices of the Plumbing &  
Pipe Fitting Industry of the U.S.  
and Canada

United Power Trades Org.

Int'l Federation of Professional and  
Technical Engineers  
Retail, Wholesale, and  
Department Store Union  
Seafarers Int'l Union  
Service Employees Int'l Union  
Sport Air Traffic Controllers  
American Federation of State,  
County and Municipal Employees  
American Federation of Teachers  
Int'l Brotherhood of Teamsters  
Int'l Assn. of Tool Craftsman

## STATEMENT FOR THE RECORD

BY THE

**UNITED DEPARTMENT OF DEFENSE WORKERS COALITION  
(UDWC)**

BEFORE

**THE SENATE HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS COMMITTEE**

REGARDING

**THE NATIONAL SECURITY PERSONNEL SYSTEM**

**Hearing Date: September 20, 2006**

(List in-formation)

Madam Chairman and Committee Members,

On behalf of the United Department of Defense Workers Coalition (UDWC) and its member unions, which represent 750,000 civilian employees in the Department of Defense (DoD), we wish to submit this statement for inclusion in the hearing record of September 20, 2006 regarding implementation of Spiral 1.1 of the National Security Personnel System (NSPS).

During the hearing, Deputy Secretary of Defense Gordon England testified that “the Department might ask Congress to consider an extension of the time line for the labor relations system – to allow sufficient time to implement adjustments to the system consistent with any court decisions.”

Later both Secretary England and Ms. Mary Lacey, the Pentagon’s program executive overseeing NSPS, testified that the Department would likely need to ask Congress for legislation extending the date of the sunset of the labor relations system developed under NSPS. Public Law 108-136 includes a provision which ensures that any authority to “establish, implement and adjust the labor relations system developed under this subsection shall expire six years after the date of enactment of this subsection, at which time the provisions of chapter 71 will apply.” (See 5 USC section 9902 (m)(9)). Since the FY 2004 National Defense Authorization Act (NDAA) was signed into law on November 24, 2003, the labor relations system created under chapter 71 of title 5 would be reinstated in November 2009. It appears to the UDWC that Secretary England will be requesting additional time past 2009 to implement the new labor relations system established by regulation and currently enjoined by the court.

**The UDWC strongly opposes any extension of the six-year period preceding the restoration of chapter 71 of Title 5.**

It is useful to review the many events that have taken place since the two largest executive branch departments were granted similar authority to establish new personnel systems by regulation. These far-reaching regulations, once implemented, will replace current provisions of Title 5, U.S. Code, affecting pay, classification, personnel management, employee appeal rights, and collective bargaining.

**Department of Defense**

The FY 2004 NDAA (Public Law 108-136) was signed on November 24, 2003.

The law required that NSPS be created jointly with unions through a “meet and confer” process. In order to ensure that the process would be a success, the 36 unions representing Defense workers came together in February 2004 and formed the UDWC in order to speak to DoD with a united voice.

After more than a year since enactment, on February 14, 2005, DoD published draft regulations to create NSPS.

In April 2005, union and Department officials began the meet and confer process. Despite a good-faith effort by the UDWC to collaborate with the agency to develop a workable personnel system, DoD failed to take the process seriously. For all practical purposes, the Department completely ignored union-backed proposals. DoD officials made clear they simply wanted unlimited authority with no real outside review. In effect, the meet and confer was “window-dressing.”

On November 1, 2005, DoD published final NSPS regulations that were unilateral, arbitrary, and went well beyond the intent of the law. Despite 30-plus days of meet and confer and 58,000 comments from concerned DoD employees, there were remarkably few changes made from the proposed regulations.

On November 7, 2005, ten federal employee unions jointly filed suit in the United States District Court for the District of Columbia.

On February 27, 2006, Judge Emmett G. Sullivan released his decision. Following closely the *Collyer* decision, Sullivan ruled illegal several key labor-management components of the new personnel system, including collective bargaining and independent third-party review of labor-management disputes.

On April 18, 2006, DoD appealed Judge Sullivan’s decision.

On September 20, 2006 Pentagon officials testified before the Senate Homeland Security and Governmental Affairs Committee.

## **Department of Homeland Security**

The Homeland Security Act was signed on November 25, 2002.

From about April to October 2003, unions representing DHS employees and OPM and DHS representatives spent six months exploring options and debating proposals to address pay, classification, performance, disciplinary actions, appeals and labor-management relations. (Design Team and Senior Review Committee)

The Senior Review Committee, made up of high level DHS, OPM, and union officials met October 20 -23, 2003. Despite a vigorous discussion, no progress was made.

On February 20, 2004, DHS issued draft regulations creating a new personnel system, including major changes to labor relations and employee appeals which were opposed by the unions.

Over three months passed. Then from June 14 to August 6, 2004, DHS, OPM, and the unions engaged in the statutory “meet and confer” process over the DHS draft regulations.

Six months passed with very little communication between the agencies and the unions. Then on January 27, 2005, DHS and OPM published the Final Rule establishing the new DHS personnel system (MAX HR).

On January 27, 2005, the unions filed suit against the DHS final regulations.

On August 12, 2005, Federal District Court Judge Rosemary Collyer ruled that major portions of the DHS regulations were illegal, and enjoined the labor relations system.

DHS appealed the *Collyer* decision to the Court of Appeals on November 14, 2005, and the Court of Appeals upheld the *Collyer* decision on the labor relations issues on June 27, 2006.

The deadline for DHS to appeal to the Supreme Court expired on September 25, 2006.

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Based on the events over the past four years, it is inconceivable that the Department of Defense could not have had a labor relations system up and running by now. Instead, despite the head start DoD had upon enactment of P.L. 108-136, due to the extensive regulatory development process DHS had just undergone on virtually the same issues, DoD did not publish draft regulations for 14 months. They waited again until the spring to engage in the statutorily required meet and confer process, but never took it seriously.

More than eight months after publishing draft regulations, DoD published final rules that were clearly illegal in light of the comprehensive and well-reasoned *Collyer* decision in August, which should have led the Department to redraft its regulations before final publication.

Despite the blow of the *Sullivan* decision against the Department in late February 2006, they did nothing to make improvements in the regulations, never suggested that the parties get together to discuss the situation again, but instead waited for more than seven weeks to file an appeal in late April.

Two months later the Court of Appeals not only upheld the *Collyer* DHS decision on labor relations, but actually strengthened the decision in favor of the unions. Still the department has done nothing to make changes to their regulations. DoD officials are content to wait until oral arguments and a Court of Appeals decision, likely due sometime in 2007.

It strains credulity that the Department is complaining that they have not had time to implement a new labor relations system. **In fact, they have had three and three-quarters years to come up with a system which could have been implemented immediately if it had been fair and lawful.**

The Department of Defense has been dilatory, punitive, and stubborn. They were granted extraordinary authority to craft a personnel system outside of Title 5, but instead they have wasted the time of the employees, the unions, the taxpayers, and worst of all, the warfighters.

The coalition urges the Congress to oppose any extension of the six-year period preceding the restoration of chapter 71.

The Department has had its chance.

This concludes our statement.